

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Nathan D. Clark,

Plaintiff,

v.

Civil No. 12-421 (JNE/LIB)
ORDER

Tom Roy,
Commissioner of Corrections,

Defendant.

In a Report and Recommendation dated February 23, 2012, the Honorable Leo I. Brisbois, United States Magistrate Judge, recommended denying Petitioner's application for a writ of habeas corpus and dismissing the action without prejudice for lack of jurisdiction. Petitioner did not object to the Report and Recommendation, but instead filed a Motion for Authorization in this Court. Under 28 U.S.C. § 2244(b), a district court cannot entertain a second or successive application for habeas corpus relief filed by a state prisoner, unless the prisoner first obtains authorization from the appropriate court of appeals. The current application is the Petitioner's second application for habeas corpus relief, and the Petitioner has not obtained pre-authorization from the Eighth Circuit Court of Appeals. The Court has conducted a de novo review of the record. *See* D. Minn. LR 72.2(b). Based on that review, the Court adopts the Report and Recommendation [Docket No. 3].

"Before a second or successive application . . . is filed in the district court, the applicant shall move in the appropriate *court of appeals* for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A) (emphasis added); *see also* 8th Cir. R. 22B (describing the information the Petitioner must provide to the Eighth Circuit in an application for second or successive habeas corpus relief). On March 13, 2012, Petition filed his Motion for

Authorization in the District Court—not in the Eighth Circuit Court of Appeals. Because Petitioner's motion was not filed in the court of appeals, the Court dismisses the motion without prejudice.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 [Docket No. 1] is DENIED.
2. This action is summarily DISMISSED without prejudice for lack of jurisdiction.
3. Petitioner's Motion for Authorization [Docket No. 5] is DISMISSED without prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 19, 2012

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge